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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRUCE PATRICK ALBRECHT

Appeal 2015-004018
Application 12/906,814
Technology Center 3700

Before LYNNE H. BROWNE, MICHELLE R. OSINSKI, and NATHAN A. ENGELS, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Bruce Patrick Albrecht (Appellant) appeals under 35 U.S.C. § 134 from the rejection of claims 1–8 and 10–22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A welding system, comprising:
>
> a housing;
>
> a control panel disposed on the housing;
>
> a switch disposed on the control panel and comprising a learning mode position and a use mode position, wherein when the switch is positioned in the learning mode position, the welding system is placed in a learning mode during which the welding system is allowed to learn an allowable parameter set and disallowed to receive a desired parameter set, and when the switch is positioned in the use mode position, the welding system is placed in a use mode during which the welding system is allowed to receive the desired parameter set and disallowed to learn the allowable parameter set; and
>
> control circuitry disposed in the housing and configured to selectively enable the learning mode when the switch is positioned in the learning mode position and the use mode when the switch is positioned in the use mode position.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Fosbinder	US 6,348,671 B1	Feb. 19, 2002
Blankenship[1]	US 2004/0140301 A1	July 22, 2004
Kainec	US 2005/0103767 A1	May 19, 2005
Albrecht	US 2008/0061049 A1	Mar. 13, 2008

[1] Throughout the Final Action the Examiner refers to both Blankenship's patent application publication, US 2004/0140301 A1, and Blankenship's patent that issued from that application, US 6,858,817 B2, issued February 22, 2005. *See e.g.* Final Act. 9. For simplicity, we refer to the patent application publication.

REJECTIONS

I. Claims 11 and 15–17 stand rejected under 35 U.S.C. § 102(b) as anticipated by Blankenship.

II. Claims 11, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Blankenship.

III. Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Blankenship and Albrecht.

IV. Claim 14 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Blankenship and Kainec.

V. Claims 1–3, 7, 10, and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Blankenship and Fosbinder.

VI. Claims 4, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Blankenship, Fosbinder, and Albrecht.[2]

VII. Claims 5, 6, 8, 18, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Blankenship, Fosbinder, and Kainec.[3]

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[2] Although, Fosbinder is not included in the statement of this rejection set forth in the Final Action (Final Act. 11), the rejection of independent claims 1 and 17, from which claims 4, 19, and 20 depend, relies upon the combined teachings of Blankenship and Fosbinder. Accordingly, we understand the omission of Fosbinder to be a typographical error.

[3] For similar reasons to those discussed in note 2 *supra*, we understand the omission of Fosbinder from the statement of this rejection in the Final Action (Final Act. 12) to be a typographical error.

DISCUSSION

Rejection I

The Examiner finds that Blankenship discloses each and every limitation of independent claim 11. *See* Final Act. 7. In particular, the Examiner finds that Blankenship discloses a method comprising the steps of "selectively enabling a learning mode (100 activation with 110 disabling circuit for comparison) . . . and a use mode (102-106)." *Id.*

Appellant contends that "Blankenship cannot anticipate independent claim 11 because Blankenship teaches a single mode system." Appeal Br. 7. Appellant further argues that "in the single mode of Blankenship's system, the system is allowed to receive both sets of parameters, and is not disallowed from receiving either set of parameters." *Id.*

Claim 11 requires

> selectively enabling a learning mode, during which the welding device is allowed to learn an allowable parameter set and disallowed to receive a desired parameter set, and a use mode, during which the welding system is allowed to receive the desired parameter set and disallowed to receive the allowable parameter set.

Appeal Br. 33. The Specification describes the learning mode as a mode wherein "the control circuitry learns an allowable parameter set." Spec. ¶ 5. The Specification further describes the use mode as a mode wherein

> the control circuitry receives a desired parameter set, compares the desired parameter set to the allowable parameter set, enables the wire feeder to feed wire from the wire spool when the desired parameter set is contained within the allowable parameter set, and locks the wire feeder to prevent wire feed from the wire spool when the desired parameter set is not contained within the allowable parameter set.

Id.

Blankenship describes button 100, identified by the Examiner as corresponding to the learning mode (Final Act. 7), stating that

> Button 100 has a chip that contains digital information indicative of the welding procedure specification WPS. When the button 100 is inserted into receptacle 62, the information on the internal chip is stored in device 90 for outputting into system 10. A tag 100a indicates the particular WPS carried by button 100.

Blankenship ¶ 31 (emphasis omitted). Nothing in Blankenship's description of button 100 indicates that use of the button enables a learning mode. Rather, button 100 includes digital information to be used by the welder. In other words, insertion of button 100 places the welder into a use mode, not a learning mode. Thus, the Examiner's finding is in error.

For this reason, we do not sustain the Examiner's decision rejecting claim 11, and claims 15–17 which depend therefrom as anticipated by Blankenship.

Rejection II

The Examiner alternatively rejects claim 11 as unpatentable over Blankenship. *See* Final Act. 9–10. The Examiner attempts to remedy the deficiency in the rejection of this claim as anticipated by Blankenship by reasoning that

> The claims at best differ from Blankenship in the recited nomenclature "learning". The buttons or switches contain information input or learned. New information is stored in memory. The computer uses that to update memory. Comparison of information like identification codes, parameter information including wire spool information, stored memory are *used and learned* for manual or automated operation to allow, enable or disable (use mode)."

Id. at 10 (emphasis added).

However, the Examiner's reasoning does not distinguish between the claimed learning and use modes, explain how Blankenship discloses two modes as claimed, or explain how Blankenship's method selectively enables a learning mode as required by claim 11. Appeal Br. 33. Thus, the Examiner's reasoning fails to cure the deficiency in the Examiner's finding discussed *supra*.

Accordingly, we do not sustain the Examiner's decision rejecting claims 11, 15, and 16 as unpatentable over Blankenship.

Rejections III–VII

Rejections III–VII all rely upon the Examiner's erroneous finding that Blankenship discloses a learning mode. *See* Final Act. 2, 11, 12. Albrecht, Kainec, and Fosbinder fail to cure the deficiencies in this finding. Accordingly, we do not sustain the Examiner's decisions rejecting claims 1–8, 10, 12–14, and 17–22 as set forth in Rejections III–VII.

DECISION

The Examiner's rejections of claims 1–8 and 10–22 are REVERSED.

REVERSED